

United States District Court

District of Arizona

55 E. Broadway

Tucson, Arizona 85701-1790

William B. Browning

Chief Judge

October 16, 1990

Honorable W. Wilkins, Jr.
Chairman, U.S. Sentencing Commission
1331 Pennsylvania Avenue, N.W.
Washington, DC 20004

Dear Judge Wilkins:

Responding to your request regarding certain guideline sentencing sections, I think it more appropriate that I express my opinions on the guidelines which I believe are shared by the majority of judges in Arizona (if not all).

Before doing that let me tell you that I have nothing but admiration and great respect for the difficult thankless and efficient job with respect to the implementation of congressional mandate. My quarrel is with the Congress, and should not be taken as focused on you or the Sentencing Commission.

Human nature being what it is, and the variation in behavioral and environmental patterns of humans, there is no rigid preconceived system which can replace the sound discretion of judges trained, as I hope we are, to recognize and accommodate those differences in the sentencing process. The attempt you have made is admirable but it falls short.

What Congress has done is given the prosecution a tool by which they can move cases more quickly through our Courts. The fear of sentencing within guideline ranges, or minimum mandatory sentencing, as you well know causes many guilty pleas which would otherwise not result. They constitute, in effect, a penalty for exercising the constitutional right to a trial.

Too many cases that I see result in downward departures from the guidelines because it is convenient to the government and not because it best serves the system which we are all trying to effectuate. The government can find cooperation in one individual and deny it in another whereas the judge is powerless to make a finding of cooperation and thus depart from a mandatory sentence. The government, to dispose of a case, can agree to a downward departure which I believe violates the spirit of the Sentencing Commission Rules.

In short what the sentencing guidelines scheme, and minimum mandatory scheme, does is to substitute prosecutorial discretion for judicial discretion. Whether it reads that way on the cold printed sheet or not it is undeniably true that in operation that is what is happening.

We are dealing, at least in my part of the country, with individuals whose cultural background is vastly different from ours and which the sentencing guidelines do not adequately address. The social and economic conditions in the Republic of Mexico produce a "criminal" who is a vastly different person, with markedly different motivation, than the American engaging in the same activity. The same is true of the Native Americans on our Indian Reservations throughout Arizona and indeed the entire western United States.

I would think that the collection of information by your commission would allow you to approach the Congress with request for changes in the system to comport with what I believe most judges feel are its inadequacies, and I would hope that you as chairman of the commission would do so.

I reiterate my admiration for the hard work you have done and offer my assistance in any way possible to further a just sentencing policy.

Kindest personal regards,


William D. Browning
Chief Judge

WDB:gmm